

#### **§ 4.1295**

of harassing or embarrassing the Government.

[43 FR 34386, Aug. 3, 1978, as amended at 50 FR 47224, Nov. 15, 1985]

#### **§ 4.1295 Awards.**

An award under these sections may include—

(a) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

(b) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award in OHA.

#### **§ 4.1296 Appeals.**

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under this Act may appeal such award to the Board under procedures set forth in § 4.1271 *et seq.*, unless the Board has made the initial decision concerning such an award.

#### **PETITIONS FOR REVIEW OF PROPOSED INDIVIDUAL CIVIL PENALTY ASSESSMENTS UNDER SECTION 518(f) OF THE ACT**

SOURCE: 53 FR 8754, Mar. 17, 1988, unless otherwise noted.

#### **§ 4.1300 Scope.**

These regulations govern administrative review of proposed individual civil penalty assessments under section 518(f) of the Act against a director, officer, or agent of a corporation.

#### **§ 4.1301 Who may file.**

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. Phone: 703-235-3800.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002]

#### **§ 4.1302 Time for filing.**

(a) A petition for review of a notice of proposed individual civil penalty as-

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essment must be filed within 30 days of its service on the individual.

(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Secretary and any tardy petition shall be dismissed.

#### **§ 4.1303 Contents and service of petition.**

(a) An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide—

(1) A concise statement of the facts entitling the individual to relief;

(2) A copy of the notice of proposed assessment;

(3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by OSM; and

(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with § 4.1109 (a) and (b) of this part.

[53 FR 8754, Mar. 17, 1988; 53 FR 10036, Mar. 28, 1988]

#### **§ 4.1304 Answer, motion, or statement of OSM.**

Within 30 days from receipt of a copy of a petition, OSM shall file with the Hearings Division an answer or motion, or a statement that it will not file an answer or motion, in response to the petition.

#### **§ 4.1305 Amendment of petition.**

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of OSM made in accordance with § 4.1304 of this part. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter

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of right to file an answer, motion, or statement in accordance with § 4.1304 of this part. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting the motion to amend.

### § 4.1306 Notice of hearing.

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

### § 4.1307 Elements; burdens of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under § 4.1150 through 4.1158, § 4.1160 through 4.1171, or § 4.1180 through 4.1187, and § 4.1270 or § 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in paragraph (a)(1) of this section and as to whether he was a director or officer of the corporation at the time of the violation or refusal.

(c) OSM shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the indi-

vidual was an agent of the corporation, as to paragraph (a)(3) of this section, and as to the amount of the individual civil penalty.

### § 4.1308 Decision by administrative law judge.

(a) The administrative law judge shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in § 4.1307 of this part.

(b) If the administrative law judge concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 30 CFR 724.18 or 846.18, absent the filing of a petition for discretionary review in accordance with § 4.1309 of this part.

### § 4.1309 Petition for discretionary review.

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of an individual civil penalty proceeding under § 4.1308 of this part.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition for review under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in §§ 4.1273–4.1276 of this part are applicable. If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5 of this part.

(g) Payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.